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Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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J. R. STONE COMPANY, INC., :

Plaintiff and Appellant, :

-vs- :

RAYMOND S. KEATE, :

Defendant and Respondent. :

Supreme Court No. 14834

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BRIEF OF RESPONDENT

An Appeal from the Judgment of the Third Judicial
District Court in and for Salt Lake County, Utah

Honorable Jay E. Banks, Judge

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AUG 22 1977

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AUTHORITIES CITED

Cases:

Green v. Sprague Ranches, 339 R2d 607 (1959). 6
Kier v. Condrack, 25 Utah 2d 139, 478 P.2d 327 (1970). 6

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BRIEF OF RESPONDENT

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NATURE OF THE CASE

This is an action for declaratory judgment with respect to the meaning of an Option to Purchase real property granted by plaintiff to defendant.

DISPOSITION IN THE LOWER COURT

The lower court declined to enter specific performance sought by both parties on their version of the meaning of an Option to Purchase real property, and entered a declaratory judgment construing the provisions of the Option, and refused to declare the Option void or award damages.

THE NATURE OF RELIEF SOUGHT ON APPEAL

Defendant-Respondent requests this Court to affirm the trial court in all respects.

STATEMENT OF FACTS

The respondent accepts as the Statement of Facts the lower court's Findings of Fact (amended) at page 156 of the Record. Respondent takes exception to the additional facts in appellant's Statement of Facts because appellant repeatedly accepts the lower court's findings in its brief. Appellant urges this Court to rely upon the trial court's findings since individual testimony was challenged by both parties for credibility. The facts may be summarized briefly as follows. Defendant owned Fiber Glass Products, Inc., which manufactured fiber glass air filter material in Salt Lake City. He needed additional working capital and a new building. He contacted Gerald R. Turner, an attorney, who assisted him to obtain financing through Valley Bank & Trust guaranteed by the Small Business Administration (S.B.A.). Turner told defendant that they needed a third party to own the building, and he recommended John R. Stone, his brother-in-law. Turner formed J. R. Stone Company, Inc., the plaintiff (appellant) herein. Defendant's company signed a lease for a building to be constructed and owned by plaintiff, and plaintiff obtained a construction loan from Valley Bank. The cost on the building exceeded the amount of the construction loan, so the balance was paid by defendant's company, which also paid for lease guarantee insurance to amortize the construction loan. Turner prepared an option signed by the parties herein granting defendant an option to purchase the new building at any time within 14 years from and after September 30, 1971. On September 8, 1975, defendant attempted to exercise the

option at the price he calculated. Plaintiff refused to acknowledge that price, and set a different one. The lower court held that neither position was correct and held that the option could be exercised at the price stated by the lower court in its declaratory judgment about the meaning of the words used in the option document.

As regards plaintiff's claimed "closing", described on page 9 of plaintiff-appellant's brief, counsel for both parties met and discussed their interpretations of the option agreement. Thereafter, this action was commenced. As indicated at page 179 of the Record, defendant attempted to obtain the lower court's assistance in enforcing a tender in accordance with the court's decision. The lower court's Findings do not support the appellant's position that defendant Keate acted in bad faith in this matter.

ARGUMENT

POINT I. THE TRIAL COURT CORRECTLY RULED IN REFUSING TO DECLARE THE OPTION VOID.

The lower court held that neither party was entitled to damages or specific performance, and that defendant was not entitled to reformation. The lower court further held that neither attempt to exercise was correct because of an ambiguity in the document prepared by Attorney Turner. Because neither

party had properly construed the option, and attempts to exercise and responses while in good faith were not in accordance with the requirement of the document as interpreted by the Court, the Court properly refused to declare the option void.

The defendant, in his Notice of Exercise of Option (Exhibit 5-P), took the position that the purchase price for the option was the mortgage balance plus 10% of the mortgage balance, and that no liens could exceed the purchase price. Plaintiff, however, took the position in its reply letter through counsel (Exhibit 6-P) that the purchase price was \$137,500 plus defendant had to assume any and all the liens of record, including the construction lien to Valley Bank & Trust Company.

The Court interpreted the option as meaning that defendant would have to pay plaintiff \$12,500 (10% of the original mortgage of \$125,000), plus \$125,000, out of which the construction loan must be paid, and defendant takes the property subject to remaining liens and encumbrances of record as of the date of the decision of the Court. The Court also held that defendant had a choice of assuming the construction loan and paying plaintiff the balance of equity held by plaintiff.

Since the Court held that the Option document (Exhibit 3-P) was ambiguous, and that neither the attempt

to exercise (Exhibit 5-P) nor the response (Exhibit 6-P) were accurate, that the Option is still valid and may be exercised in accordance with the Court's judgment until the Option expires on its own terms on September 30, 1985.

The Court held that the attempted exercise of the Option by defendant was not in accordance with the correct construction of the document because language in the document is ambiguous. The ambiguity was created by the author of the document, Attorney Gerald R. Turner, who acted in the transaction for all parties. Keate did not create the ambiguity, it exists in the language of the document.

Appellant argues, on page 13 of its brief, that the option is a continuing offer which was accepted by defendant's letter, Exhibit 5-P. The Exhibit 5-P was not an acceptance of the option according to the trial court, and the trial court refused to give defendant a deed as requested by defendant. Thus, the offer never became a contract as argued by appellant, and is still open to defendant to exercise in the manner prescribed by the trial court.

Appellant argues in the alternative that the option was refused and rejected. The Court held that defendant's attempted exercise, and plaintiff's attempted acceptance, were frustrated by an ambiguity in the document. Further, at the time of the attempted exercise, defendant believed that plaintiff through its president John Stone and his brother-in-law

Turner, had defrauded defendant in the transaction, and was entitled to construe the ambiguity created by Turner in his favor. The terms of defendant's attempted exercise are clearly warranted by certain of the language of Exhibit 3-P. The Court stated in announcing its decision that "I believe that either party here taking a stand on it is justified in questioning that instrument." "I think one of you have to come to Court." "I think you were both justified in taking the positions you did not in its entirety. But I think the option agreement itself is ambiguous enough as I cited it when you look at it as a whole." (TR 3/25/76 P. 15 lines 29-30, p. 16, lines 8-9 and 17).

The attempted exercise was in good faith, and it was not construed by the lower court as a counter-proposal in the light of the ambiguity of the document. Defendant has at no time intentionally rejected the option agreement, refused to comply with its terms, and asked the Court for declaratory judgment in the alternative so that a proper exercise could be made.

The actions of the trial court are justified under the holding in Kier v. Condrack, 25 Utah 2d 139, 478 P.2d 327 (1970), and the clarification of the option language was proper and within accepted rules of construction to allow evidence of what the parties meant by what they said in the document. Green v. Sprague Ranches, 339 P.2d 607, 610 (1959) and authorities cited therein.

Appellant then asserts in the alternative that the option was not exercised and was later revoked by appellant, and asserts a lack of consideration. It is clear from the evidence that Keate was personally obligated on the loans involved, and was the principal officer and majority shareholder in Fiber Glass Products. He also provided substantial funds for the additional costs of construction of the building, supervised the construction, and obtained lease guarantee insurance for the building. Keate gave more than adequate consideration for the option; Stone Company gave Keate little for the no-risk equity build-up position it obtained through Keate's efforts. TR 3/22/76 Vol. I. p. 39, lines 26-30; p. 36, lines 26-28; p. 33, lines 1-3; TR 3/25/76 Vol. III, pp. 3-14; TR 3/24/76, pp. 94-97.

POINT II. EXERCISE OF THE OPTION IS
NOT BARRED BY LACHES.

The Option Agreement, Exhibit 3-P, specifically provides that it may be exercised at any time within fourteen years after the date of the option. The Court proceeded with a declaratory judgment as to the meaning of the language of the Option and whether the lien to Lockhart Company for clean-up was a lien which should be paid for by Keate. There is no reformation involved in the relief granted by the Court, and thus no exercise of the Court's equity jurisdiction. The Court considered the plaintiff's claim for equitable relief

in the form of laches and denied the same. The Court likewise denied defendant's request for reformation, or other equitable relief based upon fraud. The Court did allow the lien to Lockhart Company for \$15,000 plus interest to stay on the building, even though some of those funds included monies paid to plaintiff's employees.

The trial court properly refused to apply the doctrine of laches in this case.

POINT III. THE TRIAL COURT CORRECTLY
CONSTRUED THE TERMS OF THE LEASE IN REGARD
TO LIENS.

The purported lien claimed by appellant for an unrecorded lien in behalf of Mr. Stone and his father, was properly refused by the trial court. The evidence in this matter was uncertain regarding all of the expenditures made with the Lockhart lien funds, and of which expenditures went to normal wear and tear caused for use of the building as a manufacturing plant. There was conflicting testimony as to the legitimate costs of cleanup of the building and which sums were proper. Further, the evidence indicated that after defendant's company employees and the S.B.A. secured the building, vandals broke into the building and damaged the premises. The trial court carefully considered the extensive evidence presented on the question of proper cleanup expense and declined to impose an equitable lien based upon its view

of the evidence. That ruling was proper and should not now be overturned.

CONCLUSION

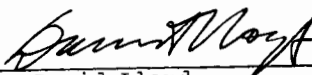
The record in this matter is extensive. The trial court declined to find fraud, and declined other equitable relief. Its ruling is fully supported by the admissible evidence, and both parties had full and fair opportunities to present their claims. While different readings of portions of the record might support differing points of view, the record as a whole fully and conclusively sustains the decision of the trial court. A serious question in this matter was the truthfulness of the testimony of individual witnesses. The credibility of each individual witness was weighed by the trial court, and its findings of fact fully support the judgment.

DATED this 22nd day of August, 1977.

Respectfully submitted,

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